IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.759 OF 2005

Raja Aederi Consultants Pvt.Ltd. ...Petitioner.
Vs.
Shri Devraj Satyanarayan Balisti & Ors. ...Respondents.

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Mr.K. S. Bapat with Mr. R. A. Rodrigues and Mr. B.V. Phadnis for the Petitioner.
Mr. R.S. Upadhyay for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 21, 2005.

P.C.:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent taken up for hearing and final disposal.

This petition is directed against an order dated 18th December 2004 of the Presiding Officer of the 11th Labour Court at Mumbai, allowing in part an application preferred by the First Respondent under Section 33C(2) of the the Industrial Disputes Act, 1947. The Labour Court directed the Petitioner to pay to the

First Respondent ex-gratia amounting to Rs.63,050/- and bonus in the amount of Rs.19,400/-.

The First Respondent joined the services of the Petitioner on 17th September 1989. In March 1993, the First Respondent is alleged to have left the employment of the Petitioner for seeking better prospects in the Gulf. However, it is alleged that the First Respondent again approached the Petitioner soon thereafter and was reemployed. The contention of the Petitioner is that in November 2002, the First Respondent voluntarily left his job. The First Respondent, after a lapse of almost seven months, by a letter dated 6th June 2003, demanded the payment of retrenchment compensation. Thereafter, on 15th October 2003 an application under Section 33-C(2) was filed before the Labour Court. The claim in the application was to the payment of retrenchment compensation, pay in lieu of notice and bonus for the year 2001-02. Evidence was recorded before the Labour Court and by its order dated 18th December 2004, the Labour Court held that the First Respondent had voluntarily left

service and, therefore, there was no question of his being retrenched from service. However, the Labour Court was of the view that an amount equivalent to the retrenchment compensation should be awarded to the First Respondent as ex-gratia. The Labour Court also held that the First Respondent was entitled to bonus for the year 2001-02.

Counsel appearing on behalf of the Petitioner submits that the Labour Court having held that the First Respondent had not been retrenched and that he had voluntarily left service, was clearly in error in allowing the application for the payment of ex-gratia under Section 33-C(2).

In order to consider the aforesaid submission, it would at the outset, be necessary to advert to the pleadings before the Labour Court. In his application under Section 33C(2), the First Respondent was somewhat inconsistent in his claim. On the one hand, he stated in the body of the application that he was claiming retrenchment compensation from 17th September 1989 till 10th

November 2002. This was reiterated in the annexure thereto. However, it was stated in the same breath that the First Respondent was retrenched from 30th November 2002. Besides noting this inconsistency, the Labour Court noted the deposition of the First Respondent in the Examination-in-Chief which was to the effect that he was issued an experience certificate while leaving the job. The admission of the First Respondent before the Labour Court also showed that he had received his salary for the month of November 2002 as well as his leave salary for the same month. On these facts, the Labour Court drew an inference that it was impossible that the First Respondent had been terminated or retrenched from service. An experience certificate was issued to the First Respondent on 30th November 2002. The experience certificate is in the following terms :

> "This is to certify that Mr.Devraj S.Balisti has been a part of our organisation since September 1989 to date. He has been working with us as a Architectural Draughtsman & Interior Designer.

During his tenure here he was involved in the development of various Architectural and Interior projects in and outside Mumbai.

His experience varies from Club interiors of Bombay Gym to Star hotels like Taj Air Catering Mumbai, Gordon House Mumbai, President Plaza Star hotel at Nasik and President Park at Aurangabad. He has also carried on Architectural drafting work for large scale projects like ICICI at Bandra Kurla Complex, Bharat Diamond Bourse at Bandra Kurla Complex, Wellington Mews for Taj at Colaba, Technopolis Park (NELCO) at Andheri, Siemens Office Building at Kharghar (Navi Mumbai), Janacim Mumbai, Grindlays Bank, Mumbai, Standard Chartered Bank, Mumbai, Trambak Court, Mumbai and Roma Garden Resorts at Pen.

He also possesses presentation-drawing skills and has been a part of Architects teams carrying presentation

work for various proposals.

He has proved to have a good aptitude and group working skills. He has fulfilled all responsibilities expected of him with great deal of enthusiasm and sincerity. We are confident that the experience he has gained here will enable him to play an important role during any project process in the future.

We would like to wish him all the success in all his endeavours."

The First Respondent himself stated that he was issued an experience certificate while leaving the job. He admitted that he was paid full salary for November 2002 as well as leave salary. The immediate reaction of an employee in the position of the First Respondent would have been to complain if he was unlawfully retrenched or terminated. There was no complaint. The First Respondent left with the experience certificate and the tenor of the

certificate is not suggestive of a retrenchment. It was only seven months later that the First Respondent submitted a letter seeking not reinstatement, but only payment of retrenchment compensation and other dues. The finding of the Labour Court on these facts was that there was no retrenchment. However, despite the finding in the present case that there was no retrenchment, the Labour Court proceeded to allow the application under Section 33-C(2) on the ground that the First Respondent should be paid ex-gratia. The Labour Court has clearly transgressed its jurisdiction in allowing the claim for payment of ex-gratia which was not sustained by any statutory or legal position. This part of the order is clearly unsustainable.

In so far as the question of bonus is concerned, the witness who deposed on behalf of the Petitioner admitted that every employee was being paid two months' salary towards bonus and that bonus had been paid to the employees for the year 2001-02 before Diwali. The amount is, however, found not to have been paid to the First Respondent. The order in regard to the payment

of bonus, therefore, is clearly sustainable and in fairness, it must be submitted that no challenge was urged to the order in so far as it directs the payment of bonus.

For the aforesaid reasons, the Petition is allowed in part. The impugned order dated 18th December 2004 in so far it directs the payment of ex-gratia amounting to Rs.63,050/- shall stand quashed and set aside. The Petition shall stand disposed of in the aforesaid terms. There shall be no order as to costs.

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